

Reasons Why Litigators Should Consider ADR

The court that is to hear the case is likely to order mediation and you would rather pick your own mediator and set your own times and dates.

Court-ordered mediation is now mandated in many jurisdictions. By allowing the court to manage your case under the fast track rules, you lose an element of control. By mediating early, you can select your mediator, and set your own dates and times for the hearing. You can even choose telemediation.

It has been several months without settlement discussions on this file or the file is over one (1) year old.

An aging file increases transaction costs. Evidence may become stale or accident scenes may change. Introducing mediation at this stage gets settlement discussions back on track.

A lawsuit will soon be filed or was just filed.

Sending a claim to mediation may stop the filing of a lawsuit, get you an extension of time, get you information, and save you litigation expenses.

The plaintiff is unrealistic and/or emotional.

Mediation allows the plaintiff to vent and to be heard. Often, there is no place for such "irrelevant" information in a courtroom. Mediation and neutral evaluation are also tools that can give an unrealistic or emotional plaintiff or defendant a more accurate perspective about the realities of litigation regarding his or her particular case. This can settle cases.

The cost of litigation exceeds the real value of the claim.

Mediation can eliminate or reduce your litigation expenses. It helps settle cases effectively and economically.

The other side is known to prefer settling cases.

Mediation helps you settle these cases without incurring unnecessary litigation expenses.

You are handling numerous similar cases such as EEOC or injury cases for one client.

Mediation can be used to handle all of these claims at one time and permit you to reduce your transaction costs.

Negotiations have broken down and you are about to incur substantial legal expenses.

Mediation provides another opportunity to attempt to resolve the dispute. By intervening through mediation, you can avoid the additional expenses.

The case is in litigation and expensive discovery is imminent.

You can usually discuss the case intelligently with far less discovery than you need for trial. Mediation may eliminate this expense.

The case is complex, time consuming and expensive to prepare for trial, i.e., procurement, aircraft accident.

These cases are frequently mediated successfully before large expenses are incurred.

Final trial preparation is about to begin.

Most cases settle "on the courthouse steps," after all the expenses have been incurred. Mediation usually settles cases early and without incurring these expenses.

You or your opponent have a "client control problem."

You know that settlement figures are reasonable, but the clients will not agree. Clients almost always attend mediations. The education that occurs gives a client a more realistic view of the issue. Once that "education" occurs, even difficult clients will work to settle the case.

Your experience tells you the case should settle though the parties are far apart in dollars.

Mediation eliminates much of the "posturing." It can also educate the clients about the realities of litigation and help settle the case.

The case involves numerous parties, making a comprehensive settlement difficult.

Mediation helps settle multiparty cases by organizing and structuring the negotiations, allowing each side (group) to confidentially explore settlement options.

The case involves a "public person" or a public body that would prefer to void excessive publicity.

Mediation is confidential and private. Only the parties attend. Only the results may become public.

The parties have and want to preserve an on-going relationship or are forced by circumstances to continue to work together.

In mediation, the parties control the settlement and the process, which is informal. Consequently, they do not develop the hostility and anger that usually result from the adversary process.